

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2715 of 1996

WITH

FIRST APPEAL NOS. 2716 to 2760 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PATEL NATVARLAL KHODIDAS

Appearance:

MR PG DESAI, GOVT. PLEADER for Petitioners
MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 02/02/98

ORAL JUDGEMENT (PER ; Y.B.BHATT, J)

Heard ld. counsel for the respective parties.
Appeals are admitted.

2. Mr. PV Hathi, ld. counsel for the
opponentsoriginal claimants in each of the matters waives

service on behalf of the opponents (original claimants).

3. On the joint request of the ld. counsel for the respective parties, these appeals are taken up for final hearing today. These are appeals arising under Sec.54

of the Land Acq. Act read with Sec.96 of C.P.Code arising from the group of Land Acq. Cases decided under Sec.18 of the Land Acq. Act, 1894 (hereinafter referred to as the Act).

4. We have heard ld. counsel for the respective parties, both on facts and on law. We have also perused the relevant documents to which our attention has been drawn by the ld. counsel which were thought necessary for the purpose of deciding present appeals.

5. For the purpose of deciding the present appeals, it is not necessary for us to enter into a detailed narration of the facts involved inasmuch as there is no substantial controversy in that regard. Ld. counsel for the respective parties have merely addressed themselves to the question of principles for the purpose of valuation of the lands in question and we have, therefore, confined ourselves to that aspect.

6. Ld. counsel for the appellant, first of all, contended that the reference court was not justified in fixing two separate values as if lands under acquisition belong to two different categories or classification, that is to say, Rs. 50/ per sq.mt. for Bagayat lands and Rs. 40/ per sq.mt. for Jirayat lands. In this context, there is no significant controversy between the ld. counsel. Both the counsel agree that although the same may be possible, this could only be so in acquisition of lands falling under a specific and mutual

exclusive category. On the facts of the present case, this situation does not prevail. Thus, for the reasons stated hereinafter, we confirm the impugned award as detailed hereinafter with the uniform amount of compensation at Rs.40/ per sq.mt. for both categories.

7. Ld. counsel for the appellant has challenged the impugned award, firstly on the ground that there is no substantial evidence for arriving at the conclusion that the land is valued at Rs. 40/ per sq.mt. However, he had taken us through relevant evidence as also treatment given to such evidence by the reference court. Amongst other evidence which has been discussed in detail in the impugned award, we find that reference court has rightly

chosen to regard the sale instances at exh.29 to 32 to be both relevant and significant. We may emphasise as also clarify that the land value reflected in the four documents at Rs. 24/, Rs. 24/, Rs. 75/ and Rs.72.50 respectively, do not form the only basis for determination of the land value on the part of the reference court. In this context, we find that reference court has merely considered these four instances as reliable and comparable for the purpose of determining the land value, along with other relevant and material evidence on record. Thus, the contention raised by the ld. counsel for the State that these four instances cannot form basis of determination of the market value, is really a contention which is misdirected or not founded on all the relevant facts on record.

8. Another contention sought to be raised by the ld. counsel for the appellant is that the lands under acquisition are not necessarily all small plots and some are even large pieces of land and the acquired land also includes a substantial extent of agricultural land. On the other hand, the four sale instances referred to by the reference court as constituting sale instances which are comparable for the purpose of determining the land value, are in fact, in respect of small plots. While, it is true that sale instances referred to herein above are in respect of small areas of land, that by itself would not render such sale instances incomparable or would not render sale price represented by the said transection as completely irrelevant. What matters is the principle which the reference court has, in fact, applied. Since the sale instances are in respect of small plots of land, a substantial reduction of 1/3rd of the sale price can and should be allowed. By implementing this principle, while determining land value at Rs. 40/ per sq.mt., the reference court has thereafter deducted 1/3rd amount from the compensation which would be payable to the claimants on the computation of the acquired land at the rate of Rs. 40/ per sq.mt. In other words, the reference court has not directly deducted 1/3rd from the value represented by the sale instances, but has at the same time, deducted the compensation payable to the claimant by 1/3rd on account of this factor. The sum and substance of this treatment is that the claimants would be entitled to the compensation after taking into account

the factor that the sale instances reflect the value of the acquired land of Rs. 40/ per sq.mt. less 1/3rd.

9. Ld. counsel for the appellant has also drawn our attention to one specific contention in Land Ref. Case No. 474/88 leading to First Appeal No. 2720/96 wherein the reference court has awarded Rs. 10,000/ for a well existing on the land bearing survey No. 769/1. In view of relevant case law on the subject, there cannot be and there is no controversy on the principle, that no compensation can be awarded under a separate head for the well. Ld. counsel for the respondent-opponent also conceded that separate compensation under a separate head for the well in question could not have been legitimately awarded. Thus, so far as the claim in Land Ref. Case No.474/88 is concerned, that is to say, opponent-respondent in First Appeal No. 2720/96 is concerned, the amount of compensation payable to him shall stand reduced by this amount of Rs.10,000/.

10. Ld. counsel for the appellant has thereafter drawn our attention to certain errors in principle committed by the reference court (according to him), and for this purpose, has sought to rely upon the following decisions :-

(i) Ld. counsel for the appellant has referred to the decision of the Supreme Court in the case of State of Orissa v/s Brijlal Misra & Others, reported at (1995) 5 SCC 203. On the basis of this decision, ld.

counsel for the appellant contended that the reference court would not be justified in awarding any compensation on account of the fact that the land under acquisition has " future potentiality ". While respectfully agreeing with the principles laid down in the said decision, we find that the same has no application to the facts of the present case inasmuch as the reference court has not, in any manner, awarded any amount by way of compensation by holding in any manner that the lands under acquisition have " future potentiality". What the reference court has, in fact, done is that it considered the overall development of the area surrounding the acquired land and this over-all development has been examined over a period prior to the date of the notification and up to the date of notification and further more this is only one of the aspects which has been taken into consideration. We are quite clear that the reference court has awarded nothing on the ground that the acquired lands would have appreciated in future on account of certain factors.

(ii) Ld. counsel for the appellant has also sought to rely upon the decision of the Supreme Court in the case of Land Acq.Officer, Hyderabad & Others v/s Male

Pullamma & Others, reported at (1996) 8 SCC 247. As in the case of previous decision discussed herein above, this decision lays down more or less the same principle namely that the market value if determined in respect of the land on a possible " potential value ", would not be a correct determination. As we have seen the facts discussed herein above, the reference court has merely

taken into consideration the development of the surrounding areas up to the date of the notification and that too as reflected in the various sale instances on record and no specific amount has been awarded, nor has any evidence been taken into account for the purpose of investigating its possible future rise in land value. Thus, even this decision would not be of much assistance to the ld. counsel for the appellant.

(iii) Ld. counsel for the appellant has also sought to rely upon the decision of the Supreme Court in the case of K.S. Shivadevamma v/s Asstt. Commissioner & Land Acq. Officer, reported at AIR 1996 SC 2886. In this decision, the Supreme Court has laid down certain principles which, according to the ld. counsel for the appellant, have not been followed by the reference court. In this context, ld. counsel for the appellant sought to rely upon the observations made in para-6 of the said decision which in substance is based on the principle that a sale-deed in respect of a small piece of land cannot form the basis for determination of compensation for large extent of land. No doubt, this principle is stated in para-6 of the said decision. However, this is to be seen in the context of the facts as set out in the said para of the aforesaid decision. In the context of a large number of decisions of the Supreme Court and particularly the observations made in the case of Land Acq. Officer, Hyderabad v/s Male Pullamma (Supra), it becomes obvious that the reference court would not be justified in determining the market value of the lands

under acquisition solely on the basis of the sale instances pertaining to a small piece of land. However, in the facts and circumstances of the case, we find that that is not so. The reference court has not relied solely upon the four documents in question which can be said to be pertaining to small areas of land. In fact, the reference court has also taken into consideration many other relevant factors which are brought on record by documentary as well as oral evidence. It cannot, therefore, be said that the four documents namely exh.29 to 32 form the only basis for determination of the land value of the lands under acquisition. In any case, as we

have already observed herein above on the facts, a further deduction of 1/3rd has been made by the reference court to off-set the possibility that the said small plots of land may be valued much higher than larger pieces of land. Thus, effectively the reference court has awarded compensation at the rate of Rs. 26.66 ps. per sq.mt.

11. No other contentions have been raised.

12. In view of the above discussion, we find that the land value found by the reference court at Rs.40/ per sq.mt. (less 1/3rd deduction), effectively awarding compensation at Rs. 26.66 ps. per sq.mt. is justified and, therefore, to that extent, the awards are confirmed and upheld and consequential appeals by the State stand dismissed.

13. We clarify that the First Appeal No. 2720/96 arising from Land Reference Case No. 474/88 partly succeeds to the extent that the compensation awarded to the original claimant therein shall stand reduced by Rs. 10,000/ (for the well). The relevant award subject to the said modification, shall otherwise stand confirmed.

14. As already observed by us herein above, a separate categorisation for Bagayat and Jirayat land is not justifiable and that all the lands under acquisition shall otherwise be valued at a uniform rate of Rs. 40/ per sq.mt. (less 1/3rd).

15. Subject to the aforesaid directions, these First Appeals shall stand dismissed (except First Appeal No. 2720/96 which is partly allowed).

16. There shall be no order as to costs. Decree accordingly. The Registry is directed to place a copy of this judgment in each of the aforesaid First Appeals, succeeding First Appeal No. 2715/96.

*rawal 0000000000